(2)

No. 86-662

In The

Supreme Court of the United States

October Term, 1986

NATIVE VILLAGE OF NENANA,

Petitioner,

v.

STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court grant certiorari to determine whether the Alaska Supreme Court was correct that an Alaska Native village must be authorized to reassume jurisdiction by the Secretary of the Interior under 25 U.S.C. § 1918 before a child protective proceeding may be transferred from state court to the tribal court?

LIST OF PARTIES

The parties to this proceeding are the Native Village of Nenana, petitioner, and the State of Alaska, Department of Health and Social Services, respondent.

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STATEMENT OF THE CASE

The following facts are presented in addition to the history provided in the petitioner's statement of the case. The mother of the minor is a non-Native. At the time the Native council originally sought a transfer to itself, the mother of the minor did not object. However, after the decision denying transfer in the Alaska Superior Court, and before the issue was appealed to the Alaska Supreme Court, the mother of the minor objected to transfer of the case to the council. The mother stipulated that her son was a child in need of aid and he was placed in the legal and physical custody of the state.

Furthermore, this Court should be aware that Nenana is one of over 200 off-reservation Native villages in Alaska. The Alaska Supreme Court found that although some of them may be capable of adjudicating children's cases, others are not.

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REASONS WHY THE PETITION SHOULD BE DENIED

The Native Village of Nenana (Nenana) has based its petition for a writ of certiorari on three grounds. First, Nenana claims that the Alaska Supreme Court's decision in *Native Village of Nenana v. State of Alaska, Department of Health and Social Services,* 722 P.2d 219 (Alaska 1986), decided an important question of federal law which should be settled by this Court. Second, Nenana claims that the *Nenana* decision conflicts with applicable decisions of this Court. Finally, Nenana argues that the decision conflicts with an earlier decision of the Alaska Supreme Court and with a decision of the Ninth Circuit Court of Appeals.

The State will show that the *Nenana* decision is not in conflict with existing case law and is applicible only to Alaska. Thus, the State urges that this Court deny the petition.

I. The Alaska Supreme Court's interpretation of 25 U.S.C. § 1918 is applicable only to Alaska.

The *Nenana* opinion rests on the Alaska Supreme Court's interpretation of two federal statutes, 28 U.S.C. § 1360 (commonly known as Pub.L. 280) and 25 U.S.C. §§ 1901-1963, the Indian Child Welfare Act (ICWA). The jurisdictional issues created by the relationship between Pub.L. 280 and the ICWA have not been addressed by the federal courts. However, the conflicts in case law and impact to other states asserted by Nenana do not exist. Alaska is unique among other Pub.L. 280 states because of its large number of off-reservation villages. This was recognized by Congress when it enacted 25 U.S.C. § 1918.[1] Thus, the *Nenana* decision has ultimate significance only for the State of Alaska.

Nenana claims that the question presented below merits this Court's attention because the Alaska Supreme Court's decision affects all Pub.L. 280 states and all tribes in those states. This argument ignores the differences between the broad jurisdiction granted to the six mandatory Pub.L. 280 states and the different degrees of jurisdiction accepted by the optional Pub.L. 280 states. For example, more than half of the optional states have no jurisdiction over child custody proceedings on reservations, while the mandatory states have jurisdiction over all such

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[1]See H. Rep. No. 95-1386, 95th Cong., 2d Sess., *reprinted in* 1978 U.S. Code Cong. & Ad. News 7547.

cases. *See* F. Cohen, *Handbook of Federal Indian Law*, p. 362 n. 125 (1982 ed.).

Nenana's claims regarding the breadth of the impact of the Alaska Court's decision also ignores the differences between Alaska and the other mandatory Pub.L. 280 states. Public Law 280 was extended to Alaska in 1958 because Congress recognized the need to extend state court civil and criminal jurisdiction to Native villages. Congress recognized that

> [Alaska's] native villages do not have adequate machinery for enforcing law and order. They have *no tribal court,* no police, no criminal code, and *in many instances no formal organization.*

S. Rep. No. 1872, 85th Cong., 2d Sess., *reprinted* in 1958 U.S. Code Cong. & Ad. News 3347-48 (emphasis added). Because this is not the case in other states, the *Nenana* decision will not have an impact on other Pub.L. 280 states.

A. The petition presents complex legal and factual questions which have not been addressed in the lower courts.

The 1971 enactment of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §1601, provides further evidence of Congress's intent to treat Alaska differently. In adopting ANCSA, Congress declared its intent to create a fair and just settlement of all claims by Natives and Native groups in Alaska based on aboriginal land claims "without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship. . . ." 42 U.S.C. § 1601(a)&(b). Congress then expressly extinguished all aboriginal title and claims to aboriginal title that might have existed in Alaska. 43 U.S.C. § 1603. All reservations in Alaska, except the

Metlakatla Indian Community of the Annette Island Reserve were revoked. 43 U.S.C. §1618. Thus, Congress extinguished substantially all "Indian country" within Alaska to which Pub.L. 280 would apply.

These factors make the effect of Pub.L. 280 unique in Alaska, although the Alaska Supreme Court did not address them directly. The situation in Alaska is factually complex. Over 200 off-reservation village councils exist in Alaska. This arguably presents 200 jurisdictional questions for Alaska. To the extent such factors affect the breadth of *Nenana's* applicability, they have not been fully litigated in the Alaska courts and are not ripe for review by this Court.

Furthermore, any Alaska Native village may reassume jurisdiction through a petition to the Secretary of the Interior. To our knowledge, none has ever been denied. The State of Alaska has agreed to support any reassumption petition which meets the Secretary's criteria. Thus, this controversy may become moot over time.

II. The Nenana decision need not be reviewed because it is consistent with the distinction this Court has made between subject areas Pub L. 280 states may exercise jurisdiction over and those it may not.

A. The Nenana decision is consistent with the principles enunciated in Bryan v. Itasca County.

The Alaska Supreme Court concluded in the *Nenana* decision that child custody proceedings cannot be transferred to Alaska Native villages under 25 U.S.C. § 1911(b)

absent authorization by the Secretary of the Interior for reassumption of jurisdiction pursuant to 25 U.S.C. § 1918. *See* 772 P.2d at 221. Since Nenana had not sought reassumption of jurisdiction from the Secretary, the Alaska court affirmed the trial court's denial of the village's petition for transfer.

The Native Village of Nenana's argument that the *Nenana* decision conflicts with decisions of this Court reflects confusion over the distinction between exclusive jurisdiction over a particular subject matter and comprehensive jurisdiction over all subject matters. This Court has never addressed the issue of whether Pub.L. 280 grants "exclusive" jurisdiction to the states over the subject matters addressed in 28 U.S.C. § 1360 (civil) and 18 U.S.C. § 1162 (criminal). This Court has held that the grant of civil jurisdiction to mandatory states under 28 U.S.C. § 1360 is not comprehensive. *See Bryan v. Itasca County*, 426 U.S. 373, 379, 384, 390 (1976) (the extension of state civil jurisdiction to tribal lands does not include the power to tax). In *Bryan*, the plain language of 28 U.S.C. § 1360(a) led this Court to conclude that "the primary intent of [28 U.S.C. § 1360] was to grant jurisdiction over private civil litigation involving reservation Indians *in state court.*" 426 U.S. at 385 (emphasis added). The reassumption issue was not addressed by this Court in *Bryan*.

The scope of the subject matter jurisdiction which may be assumed by an optional Pub.L. 280 state was addressed by this Court in *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463 (1979). This Court affirmed therein that an optional

Pub.L. 280 state has the power to assume partial subject matter jurisdiction over matters relating to "dependent children" and "adoption proceedings", as well as other areas. 439 U.S. at 475-76. If these child custody proceedings are appropriate subject matters for optional Pub.L. 280 states, they must also be subsumed in the full Pub.L. 280 jurisdiction given to mandatory states.

This Court's decisions in *Bryan* and *Yakima Indian Nation* support the Alaska Supreme Court's conclusion that Pub.L. 280 gave state courts jurisdiction over child custody proceedings involving Native children. However, these decisions do not resolve the dispute over whether that grant of jurisdiction is exclusive or concurrent with asserted tribal jurisdiction. The Alaska court's analysis of that issue is consistent with the approach this Court has taken to resolve conflicts between tribes and states. This Court has repeatedly acknowledged that

> . . . our recent cases have established a "trend . . . away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption."

Rice v. Rehner, 463 U.S. 713, 718 (1983) quoting *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 172 (1973) (footnote omitted). The federal pre-emption analysis as used by this Court

> . . . is *informed* by historical notions of tribal sovereignty, *rather than determined by them*. . . . Although "[t]he right of tribal self-government is ultimately dependent on and subject to the broad power of Congress," we still employ the tradition of Indian sovereignty as a "backdrop against which the applicable treaties and federal statutes must be read" in our pre-emption analysis.

> . . . The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance.

463 U.S. at 718-19 (emphasis added) (citations omitted). Thus, the approach used in the *Nenana* decision is consistent with this Court's federal pre-emption analysis because it recognizes Congress's role of limiting tribal jurisdiction in Alaska.

The Alaska court found in the *Nenana* decision that of the 200 Native villages in Alaska, some may be capable of adjudicating child custody matters in a competent fashion, but others may not be so equipped. 722 P.2d at 222. The court further found that it is "highly unlikely" that Congress was unaware of this when the ICWA was enacted. *Id.* Thus, the Alaska court considered and implicitly recognized that the "backdrop" of tribal sovereignty in Alaska has been limited by Congress.

Against this congressional limitation of tribal sovereignty in Alaska, the Alaska court's analysis of 28 U.S.C. § 1360 and the relevant provisions in ICWA, 25 U.S.C. §§ 1911(a) and 1918(a) cannot be faulted. Congress gave Alaska exclusive civil and criminal jurisdiction because the Native villages in Alaska were not exercising that jurisdiction. *See* S. Rep. No. 1872, 85th Cong., 2d Sess., *reprinted in* 1958 U.S. Code Cong. & Ad. News 3347-48. The interplay between 25 U.S.C. §§ 1911(a) and 1918(a) further confirms Congress's intent to give Alaska exclusive jurisdiction over child custody proceedings. By enacting 25 U.S.C. § 1918(a), Congress created a process for tribes to assume jurisdiction over child custody proceedings. Having failed to follow the process established

in 25 U.S.C. § 1918, Nenana cannot now complain of the Alaska court's enforcement of it.

B. The Nenana decision is not in conflict with this Court's decision in U.S. v. Wheeler.

Nenana also claims that the *Nenana* decision conflicts with this Court's analysis in *United States v. Wheeler*, 435 U.S. 313 (1978). The issue in *Wheeler* was whether a federal prosecution is barred by the double jeopardy clause of the U.S. Constitution because of an earlier tribal prosecution. The matter arose in a non-Pub.L. 280 state. Further, the dual sovereignty analysis in *Wheeler* has not been applied in subsequent cases addressing the relationship between tribal and state jurisdiction. *Compare Wheeler*, 435 U.S. at 317-18 with *Yakima Indian Nation*, 439 U.S. 481. Thus, *Wheeler* does not advance the discussion regarding the exclusivity of state jurisdiction.[2]

III. The Alaska Supreme Court's decision in Nenana is consistent with existing Alaska and Ninth Circuit case law.

A. The Nenana decision is consistent with the Alaska Supreme Court's decision in J.M.

Nenana claims that the *Nenana* decision conflicts with the Alaska Supreme Court's earlier decision, *In the Matter of J.M.*, 718 P.2d 150 (Alaska 1986). A reading of *J.M.* reveals that the question of reassumption of jurisdiction by the village council was not briefed, argued, or considered in the trial court or the Alaska Supreme Court. The issue before the court in *J.M.* was a narrow one: "[D]id

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[2]It is worth noting that the Ninth Circuit Court of Appeals recognized the exclusive jurisdiction of a Pub.L 280 state in *United States v. Hoodie*, 588 F.2d 292 (9th Cir. 1978).

the trial court err in finding that the tribe had waived its exclusive jurisdiction?" 718 P.2d at 153. The court held that a tribe's waiver of exclusive jurisdiction must be express, unequivocal, knowingly made, and, therefore, should be in writing. 718 P.2d at 156.

J.M. was argued solely on the village's claim of exclusive jurisdiction over a child the village had made a ward of its tribal court. *See* 25 U.S.C. § 1911(a), 718 P.2d at 151-52. The Alaska court explicitly recognized that it was not asked to decide whether the village of Kaltag is an "Indian tribe" or whether the village council is a "tribal court" under the ICWA. 718 P.2d at 153. Although the *Nenana* opinion was decided in a Section 1911 (b) transfer case, *Nenana* affects *J.M.* by identifying the reassumption question as the first question to be answered in a situation where an Alaska native village claims jurisdiction in a child custody case.[3]

B. The Nenana decision is consistent with Ninth Circuit case law.

Nenana also asserts a conflict exists between the *Nenana* decision and *Native Village of Stevens v. Smith*, 770 F.2d 1486 (9th Cir. 1985), *cert. denied* 106 S.Ct. 1640 (1986). Again, no conflict exists because the reassumption issue was not raised in *Stevens*. The issue in *Stevens* was whether the State of Alaska is required to make foster

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[3]Significantly, the ICWA does not require a tribe to have a tribal court with jurisdiction over child custody proceedings in order to participate fully in a state court proceeding by intervention. 25 U.S.C. § 1911(c). The reassumption requirement does not, therefore, prevent the child's tribe from playing the important role in state proceedings created for it by Congress. *Compare* 25 U.S.C. §§ 1901 and 1902 *with* § 1912.

care payments for a child made a ward of the tribal court. In order to reach its decision, the court was required to interpret the Social Security Act, 42 U.S.C. § 672(c) in relation to the ICWA, 25 U.S.C. § 1931(b). The state chose not to contest the issue of Stevens' jurisdiction because the case could easily be disposed of on other grounds. *See* 770 F.2d at 1488 n. 2. The Ninth Circuit Court of Appeals held that the threshold requirement that there be an agreement between the state and the placing authority had not been met. The Ninth Circuit found that no agreement existed and held that the tribe cannot force the state to enter into an agreement under the ICWA. The court never reached the question of tribal jurisdiction. As in *J.M.*, the *Nenana* decision does not impede the application of *Stevens;* it simply identifies the threshold question of whether an Alaska Native village has reassumed jurisdiction. Thus, the Alaska court's analysis in *Nenana* is consistent with the *Stevens* decision.

CONCLUSION

The petitioner's claims that the Alaska Supreme Court's decision in *Native Village of Nenana v. State of Alaska* is inconsistent with state and federal case law are without merit. The *Nenana* decision is consistent with the principles enunciated in prior decisions of this Court and those of other courts. Further, the decision resolves a dispute unique to Alaska, and will not have a significant impact on other states. Finally, given the complexity of

tribal/State jurisdiction because of the large number of village councils in Alaska and the lack of fully developed litigation in the lower courts, the State urges this Court to find that the *Nenana* decision is not ripe for review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Native Village of Nenana, Appellant,

v.

State of Alaska, Department of Health and Social Services, Appellee.

722 P.2d 219

Supreme Court of Alaska

July 18, 1986.

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Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

BURKE, Justice.

The question in this appeal is whether under the Indian Child Welfare Act, Pub.L. 95-608, 92 Stat. 3069 (1978), the superior court erred in denying an Indian tribe's petition for an order transferring the case of an Indian child from the jurisdiction of the court to that of the tribe. We conclude that the lower court properly denied the petition.

I

The Alaska Department of Health and Social Services petitioned the superior court to determine whether A.N. was a "child in need of aid" under AS 47.10.010(a)(2)(C). The Department initiated such action after it learned

that A.N. had been physically abused while in the custody of his mother and stepfather in Anchorage. At a probable cause hearing, the court awarded the Department temporary custody pursuant to AS 47.10.140.

A.N.'s natural father is an Athabascan Indian from the Alaska Native Village of Nenana. Thus, for purposes of the Indian Child Welfare Act, A.N. is an "Indian child," and the Alaska Native village of Nenana is A.N.'s "Indian tribe." See U.S.C. § 1903(4)-(5) (1983). Because of A.N.'s tribal relationship, the village was allowed to intervene in the child in need of aid proceeding. At the proceeding, it petitioned for an order transferring the case to the jurisdiction of the tribe under 25 U.S.C. § 1911 (b) (1983) which allows tribal jurisdiction in certain child custody proceedings. The superior court denied the petition and, following entry of a final judgment, the village filed this appeal.

II

The tribe petitioned for transfer pursuant to 25 U.S.C. § 1911(b). In reaching our decision, we have assumed that the instant case met all of the criteria of section 1911 (b), as argued by the Village of Nenana. Moreover, we are cognizant of the fact that the superior court made no finding of "good cause" as a basis for refusing to transfer the case. Nevertheless, we believe the superior court properly denied the tribe's petition for transfer.

The jurisdictional section of the Indian Child Welfare Act provides, in pertinent part:

> (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding

> involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
>
> (b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

25 U.S.C. § 1911 (1983) (emphasis in original). The superior court found that "[t]he Native Village of Nenana has not been approved by the Secretary of the United States Department of the Interior to reassume jurisdiction over child custody proceedings pursuant to 25 U.S.C. § 1918." Thus, the court concluded that the tribe was not entitled to exercise jurisdiction and denied the tribe's petition. Section 1918(a), provides:

> Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. *Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.*

25 U.S.C. § 1918(a) (1983) (emphasis added). The Act of August 15, 1953, mentioned in section 1918(a) and codified as 28 U.S.C. § 1360, is commonly referred to as "Public Law 280." Alaska has been a "280 state" since 1958. Pub.L. 85-615, 72 Stat. 545 (1958).

Our reading of 25 U.S.C. § 1918(a), indicates that Congress intended that Public Law 280 give certain states, including Alaska, exclusive jurisdiction over matters involving the custody of Indian children, and that those states exercise such jurisdiction until a particular tribe petitions to reassume jurisdiction over such matters, and the Secretary of the Interior approves tribe's petition.

Although some commentators have concluded that Public Law 280 does not create exclusive state jurisdiction, *see, e.g.,* F. Cohen, *Handbook of Federal Indian Law,* 344-45 (1982 ed.); D. Case, *Alaska Natives and American Laws,* 490 n. 119 (1978), we see no explanation for the mention of Public Law 280 in section 1918(a) unless it required reassumption. *See* Note, *The Indian Child Welfare Act—Tribal Self-Determination Through Participation in Child Custody Proceedings,* 1979 Wis.L. Rev. 1202, 1212 (exclusive jurisdiction under § 1911(a) is not automatic; tribes must petition for reassumption). Regardless of whether Public Law 280 vests exclusive or concurrent jurisdiction in the applicable states, *prior* to the Child Welfare Act, Indian tribes may not have had jurisdiction over custody proceedings in a section 1911(b) situation, *i.e.,* where the child was domiciled off the reservation. *See Wisconsin Potowatomies v. Houston,* 393 F.Supp. 719 (W.D. Mich. 1973) (tribe "would have been obligated to submit itself to the jurisdiction of the probate court,"

if domicile outside reservation); *Jurisdiction of Tribal Court and Colorado Juvenile Court for Determination of Custody of Dependent and Neglected Indian Child*, 62 Interior Dec. 466, 468 (1955) (opinion by Interior Department that tribal custody decree is ineffective because, in part, "the jurisdiction of Indian tribes ceases at the border of the reservation"); *but cf.* F. Cohen at 347-48 ("[o]utside Indian country tribal courts can have jurisdiction based on tribal membership," though most tribes exercise it over only uniquely internal matters). The referral jurisdiction provision may actually grant Indian tribes greater authority than they had prior to the Act.

A task force appointed to study Federal-State-Tribal relations in Alaska recently observed:

> [S]everal commentators have argued that, assuming that IRA and traditional councils are otherwise empowered to exercise powers of self-government, Pub.L. 83-280 did not prempt the council's governmental powers, and, consequently, that Native councils may continue to exercise their jurisdiction concurrently with the state.
>
> It is difficult to reconcile that conclusion with the subsequent intent of Congress embodied in legislation enacted in 1970 to enable the Metlakatla Indian Community to exercise concurrent criminal jurisdiction.

Report, *Governor's Task Force on Federal-State-Tribal Relations* [*In Alaska*], 141-42 (1986) (footnotes omitted). With regard to the particular question of jurisdiction under the Indian Child Welfare Act, the task force concluded: "*Native councils may petition the Secretary of the Interior to assume complete or referral jurisdiction over Native child custody proceedings.*" *Id.* at 152 (empha-

sis added). This appears to be a reference to 25 U.S.C. § 1911(a) and (b), which supports our interpretation.

For purposes of the Indian Child Welfare Act, the term "Indian tribe" includes any Alaska Native Village as defined in section 1602(c) of Title 43 of the United States Code. 25 U.S.C. § 1903(8) (1983). According to section 1602(c):

> "Native village" means any tribe, band, clan, village, community, or association in Alaska listed in sections 1610 and 1615 of this title, or which meets the requirements of this chapter, and which the Secretary [of the Interior] determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

43 U.S.C. § 1602(c) (1983). There are more than 200 such villages "listed" in sections 1610 and 1615 alone. 43 U.S.C. §§ 1610, 1615 (1983). Some of these entities already may have systems for dispute resolution in place capable of adjudicating custody matters in a reasonable and competent fashion; others, no doubt, do not. It seems highly unlikely that Congress was unaware of this when it enacted the Indian Child Welfare Act, or that it intended the Indian tribes in Alaska to exercise jurisdiction in child custody matters until such time as there is satisfactory proof that a particular tribe has the ability to properly adjudicate such cases.[1]

The judgment is AFFIRMED.

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[1]Given the relationship that has always existed between the federal government and the various "Indian tribes," this determination appears to be one that would have to be made by a federal official, in this case, the Secretary of the Interior.

APPENDIX B

25 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties.

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	*Indian country affected*
Alaska	All Indian country within the State
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(As amended July 10, 1984, Pub.L. 98-353, Title I, § 110, 98 Stat. 342.)

25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings.

(a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law.

Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Pub.L. 95-608, Title I, § 101, Nov. 8, 1978, 92 Stat. 3071.)

25 U.S.C. § 1918. Reassumption of jurisdiction over child custody proceedings.

(a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to

any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) (1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this

title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected States or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(Pub.L. 95-608, Title I, § 101, Nov. 8, 1978, 92 Stat. 3074.)